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CLERK'S OFFICE, DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
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SANTA ANA

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UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,  
15 Plaintiff,  
16 v.  
17 DANIEL CAPEN,  
18 Defendant.

No. SACR18-00124 JLS

PLEA AGREEMENT FOR DEFENDANT  
DANIEL CAPEN

20 1. This constitutes the plea agreement between DANIEL CAPEN  
21 ("defendant") and the United States Attorney's Office for the Central  
22 District of California ("the USAO") in the above-captioned case.  
23 This agreement is limited to the USAO and cannot bind any other  
24 federal, state, local, or foreign prosecuting, enforcement,  
25 administrative, or regulatory authorities.

26 DEFENDANT'S OBLIGATIONS

27 2. Defendant agrees to:

28 a. Give up the right to indictment by a grand jury and,

1 at the earliest opportunity requested by the USAO and provided by the  
2 Court, appear and plead guilty to counts one and two of an  
3 information in the form attached to this agreement as Exhibit A or a  
4 substantially similar form (the "information"), which charges  
5 defendant with conspiracy, in violation of 18 U.S.C. § 371, and  
6 Receipt of Kickbacks in Connection with a Federal Health Care  
7 Program, in violation of 42 U.S.C. § 1320a-7b(b)(1)(A).

8 b. Not contest facts agreed to in this agreement.

9 c. Abide by all agreements regarding sentencing contained  
10 in this agreement.

11 d. Appear for all court appearances, surrender as ordered  
12 for service of sentence, obey all conditions of any bond, and obey  
13 any other ongoing court order in this matter.

14 e. Not commit any crime; however, offenses that would be  
15 excluded for sentencing purposes under United States Sentencing  
16 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not  
17 within the scope of this agreement.

18 f. Be truthful at all times with Pretrial Services, the  
19 United States Probation Office, and the Court.

20 g. Pay the applicable special assessments at or before  
21 the time of sentencing unless defendant lacks the ability to pay and  
22 prior to sentencing submits a completed financial statement on a form  
23 to be provided by the USAO.

24 h. Not seek the discharge of any restitution obligation,  
25 in whole or in part, in any present or future bankruptcy proceeding.

26 i. Defendant understands and acknowledges that as a  
27 result of pleading guilty pursuant to this agreement, defendant will  
28 be excluded from Medicare, Medicaid, and all Federal health care

1 programs. Defendant agrees to complete and execute all necessary  
2 documents provided by the United States Department of Health and  
3 Human Services, or any other department or agency of the federal  
4 government, to effectuate this exclusion within 60 days of receiving  
5 the documents. This exclusion will not affect defendant's right to  
6 apply for and receive benefits as a beneficiary under any Federal  
7 health care program, including Medicare and Medicaid.

8       3. Defendant further agrees:

9           a. To forfeit the sum of \$5,000,000.00 (five million  
10 dollars) (the "Forfeitable Property"), which Forfeitable Property  
11 defendant agrees (1) constitutes or is derived from proceeds  
12 traceable to violations of 18 U.S.C. §§ 371, including the objects of  
13 the conspiracy, and 42 U.S.C. § 1320a-7b(b); (2) was used to  
14 facilitate and was involved in violations of 18 U.S.C. §§ 371,  
15 including the objects of the conspiracy, and 42 U.S.C. § 1320a-7b(b);  
16 and (3) shall, at the sole election of the United States of America,  
17 be criminally forfeited or civilly forfeited, administratively or  
18 judicially, pursuant to 18 U.S.C. § 981, 18 U.S.C. § 982, 28 U.S.C.  
19 § 2461, or otherwise.

20           b. To withdraw any claim defendant may have submitted to  
21 any federal agency in any administrative forfeiture proceedings  
22 commenced by that agency with respect to the Forfeitable Property.  
23 Defendant further waives his rights, if any, to any initial or  
24 further notice relative to any administrative forfeiture proceedings.  
25 Defendant understands, acknowledges, and agrees that the Forfeitable  
26 Property shall, at the sole election of the United States of America,  
27 be administratively forfeited to the United States of America without  
28 any further notice.

1                   c. To pay the Forfeitable Property to the United States  
2 of America, at least in part, as follows:

3                   (i) within sixty (60) days of defendant's execution  
4 of this plea agreement, defendant shall pay \$2,000,000 (two million  
5 dollars) by, at the United States of America's sole option  
6 (1) delivering to the USAO a cashier's check payable in that amount  
7 to the government entity identified in writing by the USAO, or (2)  
8 wire transferring the funds to an account designated in writing by  
9 the USAO; and

10                  (ii) At least thirty (30) days before defendant's  
11 sentencing, defendant shall pay \$1,500,000 million (one million five  
12 hundred thousand dollars) by, at the United States of America's sole  
13 option (1) delivering to the USAO a cashier's check payable in that  
14 amount to the government entity identified in writing by the USAO, or  
15 (2) wire transferring the funds to an account designated in writing  
16 by the USAO.

17                  d. To refrain from contesting the forfeiture (by filing a  
18 claim, statement of interest, petition for an ancillary proceeding,  
19 petition for remission or otherwise) of the Forfeitable Property in  
20 any administrative or judicial proceeding, or assisting any other  
21 person or entity in falsely contesting the forfeiture of the  
22 Forfeitable Property in any administrative or judicial proceeding.

23                  e. To take all steps necessary to pass to the United  
24 States of America clear title to the Forfeitable Property, including,  
25 without limitation, the execution of consent judgments of forfeiture,  
26 the entry of any additional money judgments of forfeiture, the  
27 identification of all monies, properties and assets of any kind owned  
28 and/or controlled by defendant, the liquidation of any item of the

1 Forfeitable Property in the manner required by the United States of  
2 America in its sole discretion, the transmission of any item of the  
3 Forfeitable Property to the United States of America upon request by  
4 the USAO and the completion of any other legal documents required for  
5 the transfer of title to the Forfeitable Property to the United  
6 States of America.

7 f. To prevent the disbursement of the Forfeitable  
8 Property without the authorization of the USAO, if such disbursements  
9 are within defendant's direct or indirect control.

10 g. To the Court's entry of an order of forfeiture,  
11 including any personal money judgment of forfeiture, at or before  
12 sentencing with respect to the Forfeitable Property and to the  
13 forfeiture of the Forfeitable Property. Defendant knowingly and  
14 voluntarily waives (i) the requirements of Federal Rules of Criminal  
15 Procedure 32.2 and 43(a) regarding notice of the forfeiture in the  
16 charging instrument, announcement of the forfeiture at sentencing,  
17 and incorporation of the forfeiture in the judgment; (ii) all  
18 constitutional and statutory challenges in any manner (including by  
19 direct appeal, habeas corpus, or any other means) to any forfeiture  
20 carried out in accordance with this agreement on any grounds; and  
21 (iii) all constitutional, legal and equitable defenses to the  
22 forfeiture of the Forfeitable Property in any proceeding on any  
23 grounds including, without limitation, that the forfeiture  
24 constitutes an excessive fine or punishment. Defendant also  
25 acknowledges and understands that the forfeiture of the Forfeitable  
26 Property is part of the sentence that may be imposed in this case and  
27 waives any failure by the Court to advise defendant of this, pursuant  
28 to Rule 11(b)(1)(J), at the time defendant's guilty plea is accepted.

1       4. Defendant further agrees to cooperate fully with the USAO,  
2 Federal Bureau of Investigation, United States Postal Service-Office  
3 of Inspector General, IRS-Criminal Investigation, and California  
4 Department of Insurance, and, as directed by the USAO, any other  
5 federal, state, local, or foreign prosecuting, enforcement,  
6 administrative, or regulatory authority. This cooperation requires  
7 defendant to:

8           a. Respond truthfully and completely to all questions  
9 that may be put to defendant, whether in interviews, before a grand  
10 jury, or at any trial or other court proceeding.

11           b. Attend all meetings, grand jury sessions, trials or  
12 other proceedings at which defendant's presence is requested by the  
13 USAO or compelled by subpoena or court order.

14           c. Produce voluntarily all documents, records, or other  
15 tangible evidence relating to matters about which the USAO, or its  
16 designee, inquires.

17           d. If requested to do so by the USAO, act in an  
18 undercover capacity to the best of defendant's ability in connection  
19 with criminal investigations by federal, state, local, or foreign law  
20 enforcement authorities, in accordance with the express instructions  
21 of those law enforcement authorities. Defendant agrees not to act in  
22 an undercover capacity, tape record any conversations, or gather any  
23 evidence except after a request by the USAO and in accordance with  
24 express instructions of federal, state, local, or foreign law  
25 enforcement authorities.

26       5. For purposes of this agreement: (1) "Cooperation  
27 Information" shall mean any statements made, or documents, records,  
28 tangible evidence, or other information provided, by defendant

1 pursuant to defendant's cooperation under this agreement or pursuant  
2 to the letter agreement previously entered into by the parties, dated  
3 on or about December 11, 2017, as extended for subsequent proffer  
4 sessions and designated cooperation-related document productions  
5 prior to the effective date of this agreement (the "Letter  
6 Agreement"); and (2) "Plea Information" shall mean any statements  
7 made by defendant, under oath, at the guilty plea hearing and the  
8 agreed to factual basis statement in this agreement.

9 THE USAO'S OBLIGATIONS

10 6. The USAO agrees to:

11 a. Not contest facts agreed to in this agreement.

12 b. Abide by all agreements regarding sentencing contained  
13 in this agreement.

14 c. Except for criminal tax violations (including  
15 conspiracy to commit such violations chargeable under 18 U.S.C.  
16 § 371), not further criminally prosecute defendant for violations  
17 arising out of defendant's conduct described in the agreed-to factual  
18 basis set forth in paragraph 22 below and in the attached Exhibit B.

19 Defendant understands that the USAO is free to criminally prosecute  
20 defendant for any other unlawful past conduct or any unlawful conduct  
21 that occurs after the date of this agreement. Defendant agrees that  
22 at the time of sentencing the Court may consider the uncharged  
23 conduct in determining the applicable Sentencing Guidelines range,  
24 the propriety and extent of any departure from that range, and the  
25 sentence to be imposed after consideration of the Sentencing  
Guidelines and all other relevant factors under 18 U.S.C. § 3553(a).

26 d. Subject to paragraph 24, at the time of sentencing,  
27 provided that defendant demonstrates an acceptance of responsibility

1 for the offense up to and including the time of sentencing, recommend  
2 a two-level reduction in the applicable Sentencing Guidelines offense  
3 level, pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary,  
4 move for an additional one-level reduction if available under that  
5 section.

6 e. Recommend that defendant be sentenced to a term of  
7 imprisonment no higher than the low end of the applicable Sentencing  
8 Guidelines range, provided that the offense level used by the Court  
9 to determine that range is 27 or higher. For purposes of this  
10 agreement, the low end of the Sentencing Guidelines range is that  
11 defined by the Sentencing Table in U.S.S.G. Chapter 5, Part A,  
12 without regard to reductions in the term of imprisonment that may be  
13 permissible through the substitution of community confinement or home  
14 detention as a result of the offense level falling within Zone B or  
15 Zone C of the Sentencing Table.

16 f. To the extent paid prior to defendant's sentencing,  
17 credit any amount defendant paid to resolve any civil claims arising  
18 out of the conduct set forth in paragraph 22 and the attached Exhibit  
19 B to this agreement, towards defendant's payment of the Forfeitable  
20 Property.

21 7. The USAO further agrees:

22 a. Not to offer as evidence in its case-in-chief in the  
23 above-captioned case or any other criminal prosecution that may be  
24 brought against defendant by the USAO, or in connection with any  
25 sentencing proceeding in any criminal case that may be brought  
against defendant by the USAO, any Cooperation Information.

27 Defendant agrees, however, that the USAO may use both Cooperation  
28 Information and Plea Information: (1) to obtain and pursue leads to

1 other evidence, which evidence may be used for any purpose, including  
2 any criminal prosecution of defendant; (2) to cross-examine defendant  
3 should defendant testify, or to rebut any evidence offered, or  
4 argument or representation made, by defendant, defendant's counsel,  
5 or a witness called by defendant in any trial, sentencing hearing, or  
6 other court proceeding; and (3) in any criminal prosecution of  
7 defendant for false statement, obstruction of justice, or perjury.

8                   b. Not to use Cooperation Information against defendant  
9 at sentencing for the purpose of determining the applicable guideline  
10 range, including the appropriateness of an upward departure, or the  
11 sentence to be imposed, and to recommend to the Court that  
12 Cooperation Information not be used in determining the applicable  
13 guideline range or the sentence to be imposed. Defendant  
14 understands, however, that Cooperation Information will be disclosed  
15 to the probation office and the Court, and that the Court may use  
16 Cooperation Information for the purposes set forth in U.S.S.G  
17 § 1B1.8(b) and for determining the sentence to be imposed.

18                   c. In connection with defendant's sentencing, to bring to  
19 the Court's attention the nature and extent of defendant's  
20 cooperation.

21                   d. If the USAO determines, in its exclusive judgment,  
22 that defendant has both complied with defendant's obligations under  
23 paragraphs 2 through 4 above and provided substantial assistance to  
24 law enforcement in the prosecution or investigation of another  
25 ("substantial assistance"), to move the Court pursuant to U.S.S.G.  
26 § 5K1.1 to fix an offense level and corresponding guideline range  
27 below that otherwise dictated by the sentencing guidelines, and to  
28 recommend a term of imprisonment within this reduced range. In

1 making this determination and determining the extent of any motion,  
2 the government may take into account benefits conferred to defendant  
3 as a result of this plea agreement.

4 DEFENDANT'S UNDERSTANDINGS REGARDING COOPERATION

5 8. Defendant understands the following:

6 a. Any knowingly false or misleading statement by  
7 defendant will subject defendant to prosecution for false statement,  
8 obstruction of justice, and perjury and will constitute a breach by  
9 defendant of this agreement.

10 b. Nothing in this agreement requires the USAO or any  
11 other prosecuting, enforcement, administrative, or regulatory  
12 authority to accept any cooperation or assistance that defendant may  
13 offer, or to use it in any particular way.

14 c. Defendant cannot withdraw defendant's guilty plea if  
15 the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1 for a  
16 reduced guideline range or if the USAO makes such a motion and the  
17 Court does not grant it or if the Court grants such a USAO motion but  
18 elects to sentence above the reduced range.

19 d. The USAO's determination whether defendant has  
20 provided substantial assistance will not depend in any way on whether  
21 the government prevails at any trial or court hearing in which  
22 defendant testifies or in which the government otherwise presents  
23 information resulting from defendant's cooperation.

24 NATURE OF THE OFFENSES

25 9. Defendant understands that for defendant to be guilty of  
26 the crime charged in count one of the information, that is,  
27 conspiracy, in violation of Title 18, United States Code, Section  
28 371, the following must be true: (1) between in or about 1998 and in

1 or about March 2013, there was an agreement between two or more  
2 persons to commit violations of Title 18, United States Code,  
3 Sections 1341, 1343, and 1346 (Honest Services Mail and Wire Fraud);  
4 Title 18, United States Code, Section 1952(a)(3) (Interstate Travel  
5 in Aid of Bribery); Title 18, United States Code, Section 1957  
6 (Monetary Transactions in Property Derived from Specified Unlawful  
7 Activity); and Title 42, United States Code, Section 1320a-7b(b)(1),  
8 (b)(2) (Solicitation/Receipt and Offering/Paying Kickbacks in  
9 Connection with a Federal Health Care Program); (2) the defendant  
10 became a member of the conspiracy knowing of at least one of its  
11 objects and intending to help accomplish it; and (3) one of the  
12 members of the conspiracy performed at least one overt act for the  
13 purpose of carrying out the conspiracy.

14 10. Defendant understands that Honest Services Mail and Wire  
15 Fraud, in violation of Title 18, United States Code, Sections 1341  
16 and 1346, and 1343 and 1346, each an object of the conspiracy charged  
17 in the information, has the following elements: (1) the defendant  
18 devised or participated in a scheme or plan to deprive a patient of  
19 his or her right to honest services; (2) the scheme or plan included  
20 payments of bribes and kickbacks to medical professionals in exchange  
21 for medical services or items; (3) the medical professionals owed a  
22 fiduciary duty to the patients; (4) the defendant acted with the  
23 intent to defraud by depriving the patients of their right of honest  
24 services of the medical professionals; (5) the defendant's act was  
25 material, that is, it had a natural tendency to influence, or was  
26 capable of influencing, a person's acts; and (6) the defendant used,  
27 or caused someone to use, the mails and a wire communication to carry  
28 out or attempt to carry out the scheme or plan.

1       11. Defendant understands that Interstate Travel in Aid of  
2 Bribery, in violation of Title 18, United States Code, Section  
3 1952(a)(3), one of the objects of the conspiracy charged in the  
4 information, has the following elements: (1) defendant used the mail  
5 or a facility of interstate commerce with the intent to promote,  
6 manage, establish, or carry on, or facilitate the promotion,  
7 management, establishment, or carrying on, of unlawful activity,  
8 specifically payment and receipt of kickbacks in violation of  
9 California Business & Professions Code § 650 and California Insurance  
10 Code § 750; and (2) after doing so, defendant performed or attempted  
11 to perform an act to promote, manage, establish, or carry on, or  
12 facilitate the promotion, management, establishment, or carrying on,  
13 of such unlawful activity.

14       12. Defendant understands that Transactional Money Laundering,  
15 in violation of Title 18, United States Code, Section 1957, one of  
16 the objects of the conspiracy charged in the information, has the  
17 following elements: (1) the defendant knowingly engaged or attempted  
18 to engage in a monetary transaction; (2) the defendant knew the  
19 transaction involved criminally derived property; (3) the property  
20 had a value greater than \$10,000; (4) the property was, in fact,  
21 derived from specified unlawful activity, namely, honest services  
22 mail or wire fraud, health care fraud, or illegal kickbacks for  
23 health care referrals; and (5) the transaction occurred in the United  
24 States.

25       13. Defendant understands that Payment or Receipt of Kickbacks  
26 in Connection with a Federal Health Care Program, in violation of  
27 Title 42, United States Code, Sections 1320a-7b(b)(2) and (b)(1),  
28 each an object of the conspiracy charged in the information, has the

1 following elements: (1) defendant knowingly and willfully paid or  
2 received remuneration, directly or indirectly, in cash or in kind, to  
3 or from another person; (2) the remuneration was given to induce that  
4 person to refer an individual for the furnishing or arranging for the  
5 furnishing of any item or service for which payment may be made in  
6 whole or in part under a Federal health care program; and  
7 (3) defendant knew that such payment of remuneration was illegal.

8 14. Defendant understands that for defendant to be guilty of  
9 Receipt of Kickbacks in Connection with a Federal Health Care  
10 Program, in violation of Title 42, United States Code, Sections  
11 1320a-7b(b)(1), as charged in count two of the information, has the  
12 following elements: (1) defendant knowingly and willfully received  
13 remuneration, directly or indirectly, in cash or in kind, from  
14 another person; (2) the remuneration was given to induce defendant to  
15 refer an individual for the furnishing or arranging for the  
16 furnishing of any item or service for which payment may be made in  
17 whole or in part under a Federal health care program; and  
18 (3) defendant knew that such payment of remuneration was illegal.

19 PENALTIES AND RESTITUTION

20 15. Defendant understands that the statutory maximum sentence  
21 that the Court can impose for a violation of Title 18, United States  
22 Code, Section 371, as charged in count one of the information, is:  
23 five years' imprisonment, a three-year period of supervised release;  
24 a fine of \$250,000 or twice the gross gain or gross loss resulting  
25 from the offense, whichever is greater; and a mandatory special  
26 assessment of \$100.

27 16. Defendant understands that the statutory maximum sentence  
28 that the Court can impose for a violation of Title 42, United States

1 Code, Section 1320a-7b(b) (1) (A), is: five years' imprisonment; a  
2 three-year period of supervised release; a fine of \$250,000 or twice  
3 the gross gain or gross loss resulting from the offense, whichever is  
4 greatest; and a mandatory special assessment of \$100.

5 17. Defendant therefore understands that the total maximum  
6 sentence for all offenses to which defendant is pleading guilty is:  
7 ten years' imprisonment; a three-year period of supervised release; a  
8 fine of \$500,000 or twice the gross gain or gross loss resulting from  
9 the offense, whichever is greatest; and a mandatory special  
10 assessment of \$200.

11 18. Defendant understands that defendant will be required to  
12 pay full restitution to the victims of the offenses to which  
13 defendant is pleading guilty. Defendant agrees that, in return for  
14 the USAO's compliance with its obligations under this agreement, the  
15 Court may order restitution to persons other than the victims of the  
16 offenses to which defendant is pleading guilty and in amounts greater  
17 than those alleged in the counts to which defendant is pleading  
18 guilty. In particular, defendant agrees that the Court may order  
19 restitution to any victim of any of the following for any losses  
20 suffered by that victim as a result: (a) any relevant conduct, as  
21 defined in U.S.S.G. § 1B1.3, in connection with the offenses to which  
22 defendant is pleading guilty; and (b) any charges not prosecuted  
23 pursuant to this agreement as well as all relevant conduct, as  
24 defined in U.S.S.G. § 1B1.3, in connection with those charges. The  
25 parties further agree that any amount forfeited under this agreement  
26 and/or paid in order to resolve civil claims arising from the conduct  
27 set forth in paragraph 22 and the attached Exhibit B to this  
28 agreement shall be credited towards defendant's payment of any

1 restitution obligation the Court may order, and that any amount  
2 actually paid as restitution shall be credited towards the payment of  
3 the Forfeitable Property. The parties also agree that payments made  
4 to the government in satisfaction of any civil resolution of claims  
5 filed under the False Claims Act, 31 U.S.C. § 3729, based upon the  
6 conduct set forth in forth in paragraph 22 and the attached Exhibit  
7 B, shall be deemed payments toward restitution.

8 19. Defendant understands that supervised release is a period  
9 of time following imprisonment during which defendant will be subject  
10 to various restrictions and requirements. Defendant understands that  
11 if defendant violates one or more of the conditions of any supervised  
12 release imposed, defendant may be returned to prison for all or part  
13 of the term of supervised release authorized by statute for the  
14 offense that resulted in the term of supervised release, which could  
15 result in defendant serving a total term of imprisonment greater than  
16 the statutory maximum stated above.

17 20. Defendant understands that, by pleading guilty, defendant  
18 may be giving up valuable government benefits and valuable civic  
19 rights, such as the right to vote, the right to possess a firearm,  
20 the right to hold office, and the right to serve on a jury.  
21 Defendant understands that once the court accepts defendant's guilty  
22 pleas, it will be a federal felony for defendant to possess a firearm  
23 or ammunition. Defendant understands that the conviction in this  
24 case may also subject defendant to various other collateral  
25 consequences, including but not limited to revocation of probation,  
26 parole, or supervised release in another case, mandatory exclusion  
27 from providing services for any federal health care benefit program  
28 for at least five years, and suspension or revocation of a

1 professional license. Defendant understands that unanticipated  
2 collateral consequences will not serve as grounds to withdraw  
3 defendant's guilty pleas.

4 21. Defendant understands that, if defendant is not a United  
5 States citizen, the felony convictions in this case may subject  
6 defendant to: removal, also known as deportation, which may, under  
7 some circumstances, be mandatory; denial of citizenship; and denial  
8 of admission to the United States in the future. The court cannot,  
9 and defendant's attorney also may not be able to, advise defendant  
10 fully regarding the immigration consequences of the felony  
11 convictions in this case. Defendant understands that unexpected  
12 immigration consequences will not serve as grounds to withdraw  
13 defendant's guilty pleas.

14 FACTUAL BASIS

15 22. Defendant admits that defendant is, in fact, guilty of the  
16 offenses to which defendant is agreeing to plead guilty. Defendant  
17 and the USAO agree to the statement of facts provided in the attached  
18 Exhibit B and agree that this statement of facts is sufficient to  
19 support pleas of guilty to the charges described in this agreement  
20 and to establish the Sentencing Guidelines factors set forth in  
21 paragraph 24 below, but is not meant to be a complete recitation of  
22 all facts relevant to the underlying criminal conduct or all facts  
23 known to either party that relate to that conduct.

24 SENTENCING FACTORS

25 23. Defendant understands that in determining defendant's  
26 sentence the Court is required to calculate the applicable Sentencing  
27 Guidelines range and to consider that range, possible departures  
28 under the Sentencing Guidelines, and the other sentencing factors set

1 forth in 18 U.S.C. § 3553(a). Defendant understands that the  
2 Sentencing Guidelines are advisory only, that defendant cannot have  
3 any expectation of receiving a sentence within the calculated  
4 Sentencing Guidelines range, and that after considering the  
5 Sentencing Guidelines and the other § 3553(a) factors, the Court will  
6 be free to exercise its discretion to impose any sentence it finds  
7 appropriate up to the maximum set by statute for the offenses of  
8 conviction.

9       24. Defendant and the USAO stipulate and agree to the following  
10 applicable Sentencing Guidelines factors:

11 Base Offense Level: 8 [U.S.S.G. § 2B4.1(a)(2)]

12	<u>Specific Offense</u>	
13	<u>Characteristics</u>	
14	Value of Improper Benefit Conferred to Pacific Hospital (between \$9.5M and \$25M):	+20 [U.S.S.G. § 2B4.1(b)(1)(B)]
15	Abuse of Position of Trust:	+2 [U.S.S.G. § 3B1.3]
16	Acceptance of Responsibility:	-3 [U.S.S.G. § 3E1.1(a)]
17	Total offense level:	27

19 The USAO will agree to a two-level downward adjustment for acceptance  
20 of responsibility (and, if applicable, move for an additional one-  
21 level downward adjustment under U.S.S.G. § 3E1.1(b)) only if the  
22 conditions set forth in paragraphs 2 through 4 and 7(d) are met and  
23 if defendant has not committed, and refrains from committing, acts  
24 constituting obstruction of justice within the meaning of U.S.S.G. §  
25 3C1.1, as discussed below. Subject to paragraph 39 below, defendant  
26 and the USAO agree not to seek, argue, or suggest in any way, either  
27 orally or in writing, that any other specific offense  
28 characteristics, adjustments, or departures relating to the offense

1 level be imposed. Defendant agrees, however, that if, after signing  
2 this agreement but prior to sentencing, defendant were to commit an  
3 act, or the USAO were to discover a previously undiscovered act  
4 committed by defendant prior to signing this agreement, which act, in  
5 the judgment of the USAO, constituted obstruction of justice within  
6 the meaning of U.S.S.G. § 3C1.1, the USAO would be free to seek the  
7 enhancement set forth in that section and to argue that defendant is  
8 not entitled to a downward adjustment for acceptance of  
9 responsibility under U.S.S.G. § 3E1.1.

10        25. Defendant understands that there is no agreement as to  
11 defendant's criminal history or criminal history category.

12       26. Defendant and the USAO reserve the right to argue for a  
13 sentence outside the sentencing range established by the Sentencing  
14 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),  
15 (a)(2), (a)(3), (a)(6), and (a)(7).

WAIVER OF STATUTE OF LIMITATIONS

17       27. Having been fully advised by defendant's attorney regarding  
18 application of the statute of limitations to the offenses to which  
19 defendant is pleading guilty, defendant hereby knowingly,  
20 voluntarily, and intelligently waives, relinquishes, and gives up:  
21 (a) any right that defendant might have not to be prosecuted for the  
22 offenses to which defendant is pleading guilty because of the  
23 expiration of the statute of limitations for those offenses prior to  
24 the filing of the information alleging those offenses; and (b) any  
25 defense, claim, or argument defendant could raise or assert that  
26 prosecution of the offenses to which defendant is pleading guilty is  
27 barred by the expiration of the applicable statute of limitations,  
28 pre-indictment delay, or any speedy trial violation.

## WAIVER OF CONSTITUTIONAL RIGHTS

28. Defendant understands that by pleading guilty, defendant gives up the following rights:

- a. The right to persist in a plea of not guilty.
- b. The right to a speedy and public trial by jury.

c. The right to be represented by counsel - and if necessary have the court appoint counsel - at trial. Defendant understands, however, that, defendant retains the right to be represented by counsel - and if necessary have the court appoint counsel - at every other stage of the proceeding.

d. The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e. The right to confront and cross-examine witnesses against defendant.

f. The right to testify and to present evidence in opposition to the charges, including the right to compel the attendance of witnesses to testify.

g. The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

h. Any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

WAIVER OF APPEAL OF CONVICTIONS

29. Defendant understands that, with the exception of an appeal based on a claim that defendant's guilty pleas were involuntary, by pleading guilty defendant is waiving and giving up

1 any right to appeal defendant's convictions on the offenses to which  
2 defendant is pleading guilty.

3 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

4 30. Defendant agrees that, provided the Court imposes a total  
5 term of imprisonment on all counts of conviction at or below the  
6 high-end of the Sentencing Guidelines range corresponding to a total  
7 offense level of 27 and the criminal history category determined by  
8 the Court, defendant gives up the right to appeal all of the  
9 following: (a) the procedures and calculations used to determine and  
10 impose any portion of the sentence; (b) the term of imprisonment  
11 imposed by the Court; (c) the fine imposed by the court, provided it  
12 is within the statutory maximum; (d) the amount and terms of any  
13 restitution order, provided it requires payment of no more than  
14 \$10,000,000 (ten million dollars); (e) the term of probation or  
15 supervised release imposed by the Court, provided it is within the  
16 statutory maximum; and (f) any of the following conditions of  
17 probation or supervised release imposed by the Court: the conditions  
18 set forth in General Orders 318, 01-05, and/or 05-02 of this Court;  
19 the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and  
20 3583(d); and the alcohol and drug use conditions authorized by 18  
21 U.S.C. § 3563(b)(7).

22 31. Defendant also gives up any right to bring a post-  
23 conviction collateral attack on the convictions or sentence,  
24 including any order of restitution, except a post-conviction  
25 collateral attack based on a claim of ineffective assistance of  
26 counsel, a claim of newly discovered evidence, or an explicitly  
27 retroactive change in the applicable Sentencing Guidelines,  
28 sentencing statutes, or statutes of conviction.

32. The USAO agrees that, provided all portions of the sentence are at or below the total statutory maximum specified above, the USAO gives up its right to appeal any portion of the sentence.

RESULT OF WITHDRAWAL OF GUILTY PLEAS

33. Defendant agrees that if, after entering guilty pleas pursuant to this agreement, defendant seeks to withdraw and succeeds in withdrawing any of defendant's guilty pleas on any basis other than a claim and finding that entry into this plea agreement was involuntary, then (a) the USAO will be relieved of all of its obligations under this agreement, including in particular its obligations regarding the use of Cooperation Information; (b) in any investigation, criminal prosecution, or civil, administrative, or regulatory action, defendant agrees that any Cooperation Information and any evidence derived from any Cooperation Information shall be admissible against defendant, and defendant will not assert, and hereby waives and gives up, any claim under the United States Constitution, any statute, or any federal rule, that any Cooperation Information or any evidence derived from any Cooperation Information should be suppressed or is inadmissible; and (c) should the USAO choose to pursue any charge that was not filed as a result of this agreement, then (i) any applicable statute of limitations will be tolled between the date of defendant's signing of this agreement and the filing commencing any such action; and (ii) defendant waives and gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such action, except to the extent that such defenses existed as of the date of defendant's signing this agreement.

EFFECTIVE DATE OF AGREEMENT

34. This agreement is effective upon signature and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney.

## BREACH OF AGREEMENT

6           35. Defendant agrees that if defendant, at any time after the  
7 effective date of this agreement, knowingly violates or fails to  
8 perform any of defendant's obligations under this agreement ("a  
9 breach"), the USAO may declare this agreement breached. For example,  
10 if defendant knowingly, in an interview, before a grand jury, or at  
11 trial, falsely accuses another person of criminal conduct or falsely  
12 minimizes defendant's own role, or the role of another, in criminal  
13 conduct, defendant will have breached this agreement. All of  
14 defendant's obligations are material, a single breach of this  
15 agreement is sufficient for the USAO to declare a breach, and  
16 defendant shall not be deemed to have cured a breach without the  
17 express agreement of the USAO in writing. If the USAO declares this  
18 agreement breached, and the Court finds such a breach to have  
19 occurred, then:

20                   a.    If defendant has previously entered a guilty plea  
21 pursuant to this agreement, defendant will not be able to withdraw  
22 the guilty plea.

23                   b.     The USAO will be relieved of all its obligations under  
24 this agreement; in particular, the USAO: (i) will no longer be bound  
25 by any agreements concerning sentencing and will be free to seek any  
26 sentence up to the statutory maximum for the crime to which defendant  
27 has pleaded guilty; and (ii) will no longer be bound by any agreement  
28 regarding the use of Cooperation Information and will be free to use

1 any Cooperation Information in any way in any investigation, criminal  
2 prosecution, or civil, administrative, or regulatory action.

3                   c. The USAO will be free to criminally prosecute  
4 defendant for false statement, obstruction of justice, and perjury  
5 based on any knowingly false or misleading statement by defendant.

6                   d. In any investigation, criminal prosecution, or civil,  
7 administrative, or regulatory action: (i) defendant will not assert,  
8 and hereby waives and gives up, any claim that any Cooperation  
9 Information was obtained in violation of the Fifth Amendment  
10 privilege against compelled self-incrimination; and (ii) defendant  
11 agrees that any Cooperation Information and any Plea Information, as  
12 well as any evidence derived from any Cooperation Information or any  
13 Plea Information, shall be admissible against defendant, and  
14 defendant will not assert, and hereby waives and gives up, any claim  
15 under the United States Constitution, any statute, Rule 410 of the  
16 Federal Rules of Evidence, Rule 11(f) of the Federal Rules of  
17 Criminal Procedure, or any other federal rule, that any Cooperation  
18 Information, any Plea Information, or any evidence derived from any  
19 Cooperation Information or any Plea Information should be suppressed  
20 or is inadmissible.

21               36. Following the Court's finding of a knowing breach of this  
22 agreement by defendant, should the USAO choose to pursue any charge  
23 that was not filed as a result of this agreement, then:

24               a. Defendant agrees that any applicable statute of  
25 limitations is tolled between the date of defendant's signing of this  
26 agreement and the filing commencing any such action.

27               b. Defendant waives and gives up all defenses based on  
28 the statute of limitations, any claim of pre-indictment delay, or any

1 speedy trial claim with respect to any such action, except to the  
2 extent that such defenses existed as of the date of defendant's  
3 signing this agreement.

4 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

5 37. Defendant agrees that if any count of conviction is  
6 vacated, reversed, or set aside, the USAO may: (a) ask the Court to  
7 resentence defendant on any remaining count of conviction, with both  
8 the USAO and defendant being released from any stipulations regarding  
9 sentencing contained in this agreement, (b) ask the Court to void the  
10 entire plea agreement and vacate defendant's guilty plea on any  
11 remaining count of conviction, with both the USAO and defendant being  
12 released from all their obligations under this agreement, or  
13 (c) leave defendant's remaining conviction, sentence, and plea  
14 agreement intact. Defendant agrees that the choice among these three  
15 options rests in the exclusive discretion of the USAO.

16 COURT AND PROBATION OFFICE NOT PARTIES

17 38. Defendant understands that the Court and the United States  
18 Probation Office are not parties to this agreement and need not  
19 accept any of the USAO's sentencing recommendations or the parties'  
20 agreements to facts or sentencing factors.

21 39. Defendant understands that both defendant and the USAO are  
22 free to: (a) supplement the facts by supplying relevant information  
23 to the United States Probation Office and the Court, (b) correct any  
24 and all factual misstatements relating to the Court's Sentencing  
25 Guidelines calculations and determination of sentence, and (c) argue  
26 on appeal and collateral review that the Court's Sentencing  
27 Guidelines calculations and the sentence it chooses to impose are not  
28 error, although each party agrees to maintain its view that the

1 calculations in paragraph 24 above are consistent with the facts of  
2 this case. While this agreement permits both the USAO and defendant  
3 to submit full and complete factual information to the United States  
4 Probation Office and the Court, even if that factual information may  
5 be viewed as inconsistent with the facts agreed to in this agreement,  
6 this agreement does not affect defendant's and the USAO's obligations  
7 not to contest the facts agreed to in this agreement.

8 40. Defendant understands that even if the Court ignores any  
9 sentencing recommendation, finds facts or reaches conclusions  
10 different from those agreed to, and/or imposes any sentence up to the  
11 maximum established by statute, defendant cannot, for that reason,  
12 withdraw defendant's guilty pleas, and defendant will remain bound to  
13 fulfill all defendant's obligations under this agreement. Defendant  
14 understands that no one -- not the prosecutor, defendant's attorney,  
15 or the Court -- can make a binding prediction or promise regarding  
16 the sentence defendant will receive, except that it will be within  
17 the statutory maximum.

18 NO ADDITIONAL AGREEMENTS

19 41. This agreement supersedes and replaces the Letter  
20 Agreement. Defendant understands that, except as set forth in this  
21 agreement, there are no promises, understandings, or agreements  
22 between the USAO and defendant or defendant's attorney, and that no  
23 additional promise, understanding, or agreement may be entered into  
24 unless in a writing signed by all parties or on the record in court.

25 ///

26 ///

27 ///

1                   PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

2       42. The parties agree that this agreement will be considered  
3 part of the record of defendant's guilty plea hearing as if the  
4 entire agreement had been read into the record of the proceeding.

5       AGREED AND ACCEPTED

6       UNITED STATES ATTORNEY'S OFFICE  
7       FOR THE CENTRAL DISTRICT OF  
8       CALIFORNIA

9       TRACY L. WILKISON  
10      Attorney for the United States,  
11      Acting Under Authority Conferred  
12      by 28 U.S.C. § 515

13      ASHWIN JANAKIRAM  
14      Assistant United States Attorney

15                   Date

16      DANIEL CAPEN  
17      Defendant

18                   Date

19      DOUGLAS A. AXEL  
20      Attorney for Defendant  
21      DANIEL CAPEN

22                   Date

23                   4/20/18

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3 part of the record of defendant's guilty plea hearing as if the  
4 entire agreement had been read into the record of the proceeding.

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6 UNITED STATES ATTORNEY'S OFFICE  
7 FOR THE CENTRAL DISTRICT OF  
CALIFORNIA

8       TRACY L. WILKISON  
9       Attorney for the United States,  
Acting Under Authority Conferred  
by 28 U.S.C. § 515

ASHWIN JANAKIRAM  
Assistant United States Attorney

---

Date \_\_\_\_\_

DANIEL CAPEN  
Defendant

Date

DOUGLAS A. AXEL  
Attorney for Defendant  
DANIEL CAPEN

Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.

*Daniel A. Gaden*  
DANIEL A. GADEN

DANIEL CAPEN  
Defendant

4.19.18

Date

CERTIFICATION OF DEFENDANT's ATTORNEY

2 I am DANIEL CAPEN's attorney. I have carefully and thoroughly  
3 discussed every part of this agreement with my client. Further, I  
4 have fully advised my client of his rights, of possible pretrial  
5 motions that might be filed, of possible defenses that might be  
6 asserted either prior to or at trial, of the sentencing factors set  
7 forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines  
8 provisions, and of the consequences of entering into this agreement.  
9 To my knowledge: no promises, inducements, or representations of any  
10 kind have been made to my client other than those contained in this  
11 agreement; no one has threatened or forced my client in any way to  
12 enter into this agreement; my client's decision to enter into this  
13 agreement is an informed and voluntary one; and the factual basis set  
14 forth in this agreement is sufficient to support my client's entry of  
15 guilty pleas pursuant to this agreement.

DOUGLAS A. AXEL  
Attorney for Defendant  
DANIEL CAPEN

8

**EXHIBIT B**

## STATEMENT OF FACTS

## Relevant Entities

Healthsmart Pacific Inc., doing business as Pacific Hospital of Long Beach ("Pacific Hospital" or "PHLB"), was a hospital located in Long Beach, California, specializing in surgeries, particularly spinal and orthopedic surgeries. From in or around 1997 to in or around June 2004, Pacific Hospital was owned by majority shareholder Michael D. Drobot ("Drobot").

On or about September 27, 2005, unindicted co-conspirator A ("UCC-A") effectively became the sole shareholder of Pacific Hospital through his ownership and control of the "[UCC-A] Family Trust," which, in turn, owned Abrazos Healthcare, Inc. ("Abrazos"), a privately held corporation formed and incorporated in February 2005 for the purpose of purchasing shares of Pacific Hospital from Drobot. UCC-A, through Abrazos, also acquired other interests in affiliated entities previously owned and/or controlled by Drobot. Between 1998 and March 2013, Pacific Hospital was operated and/or controlled by Drobot and UCC-A.

In about June 2006, UCC-A offered defendant DANIEL CAPEN ("defendant"), an orthopedic surgeon, the opportunity to purchase 10% of the common stock of Abrazos to further cement defendant's relationship with Pacific Hospital and incentivize defendant's referral of patients for surgeries and other medical services to Pacific Hospital. While defendant acquired 10% of the common stock of Abrazos, which effectively gave defendant a 10% ownership interest in Pacific Hospital, he did not operate or control the hospital and did not ultimately profit from his investment.

1       On or about October 12, 2010, Drobot, through an affiliated  
2 entity, purchased UCC-A's shares of Abrazos, which effectively  
3 provided Drobot a 90% ownership interest in Pacific Hospital, while  
4 defendant continued to maintain his 10% ownership interest in Pacific  
5 Hospital.

6       Pacific Specialty Physician Management, Inc. ("PSPM") was a  
7 corporation headquartered in Newport Beach, California, that provided  
8 administrative and management services for physicians' offices,  
9 including the management of the Southwestern Orthopedic Medical  
10 Corporation, doing business as Downey Orthopedic Medical Group  
11 ("Downey Ortho"). Defendant CAPEN, along with other physicians  
12 affiliated with Downey Ortho, maintained a medical practice at  
13 various Downey Ortho clinic locations.

14       California Pharmacy Management LLC ("CPM") was a limited  
15 liability company, headquartered in Newport Beach, California, that  
16 operated and managed a pharmaceutical dispensing program in medical  
17 clinics for physicians. Drobot and Michael R. Drobot Jr. ("Drobot  
18 Jr.") owned and/or operated CPM.

19       Industrial Pharmacy Management LLC ("IPM") was a limited  
20 liability company, headquartered in Newport Beach, California. IPM  
21 operated and managed a pharmaceutical dispensing program in medical  
22 clinics for physicians through the use of pharmaceutical management  
23 agreements and claims purchase agreements. Drobot principally owned  
24 and controlled IPM until approximately 2010, when Drobot Jr. assumed  
25 ownership and control of IPM.

26       International Implants LLC ("I2") was a limited liability  
27 company, headquartered in Newport Beach, California, that purchased  
28 implantable medical hardware for use in spinal surgeries from

1 original manufacturers and sold them to hospitals, particularly  
2 Pacific Hospital, starting around July 2008. I2 was effectively  
3 owned and/or controlled by Drobot.

4 PHLB, PSPM, CPM, IPM, and I2 are collectively referred to herein  
5 as "Pacific Hospital and Affiliated Entities."

6 The Kickback Arrangements

7 Defendant was an orthopedic surgeon specializing in spinal  
8 surgeries and owed a fiduciary duty to his patients. Beginning in or  
9 around 1998 and continuing through at least March 2013, defendant,  
10 along with Drobot, UCC-A, Drobot Jr., James Canedo ("Canedo"), George  
11 William Hammer ("Hammer"), Timothy Hunt ("Hunt"), and others, agreed  
12 to participate and did, in fact, participate in an illegal  
13 arrangement to pay and receive kickbacks in exchange for referring  
14 and performing surgeries and other patient-related services at  
15 Pacific Hospital and Affiliated Entities. As part of the agreement,  
16 defendant agreed to receive proceeds of the kickback scheme, and  
17 subsequently participate in financial transactions over \$10,000  
18 involving such proceeds.

19 To facilitate the payment of kickbacks, Drobot and UCC-A caused  
20 Pacific Hospital and Affiliated Entities to enter into agreements  
21 with physicians, including defendant, and other medical professionals  
22 ("Pacific Kickback Recipients") that were used to pay kickbacks in  
23 exchange for the referral of spinal surgeries, other types of  
24 surgeries, magnetic resonance imaging ("MRI"), toxicology ("UDT"),  
25 durable medical equipment, and other services (the "Kickback Tainted  
26 Surgeries and Services") to be performed at Pacific Hospital and  
27 Affiliated Entities.

28

1       In many cases, the agreements would be reduced to written  
2 contracts, including, among others, collection agreements, option  
3 agreements, research and development agreements, lease and rental  
4 agreements, consulting agreements, marketing agreements, management  
5 agreements, and pharmacy agreements. The written agreements would  
6 not specify that one purpose for the agreements would be to induce  
7 Pacific Kickback Recipients to refer Kickback Tainted Surgeries and  
8 Services to Pacific Hospital and Affiliated Entities; indeed, some of  
9 the agreements would specifically state that referrals were not  
10 contemplated or a basis for the agreement. Additionally, the value  
11 or consideration discussed as part of these arrangements would be  
12 paid, entirely or in part, depending on the arrangement, to cause  
13 Pacific Kickback Recipients to refer Kickback Tainted Surgeries and  
14 Services to Pacific Hospital and Affiliated Entities. Relatedly, the  
15 written contracts would generally allow for remuneration to Pacific  
16 Kickback Recipients far in excess of any reasonable fair market value  
17 assessment of legitimate services or things of value purportedly  
18 contracted for -- to the extent calculated without regard to the  
19 value of the Kickback Tainted Surgeries and Services.

20       Defendant received remuneration in exchange for referring and  
21 performing Kickback Tainted Surgeries and Services at Pacific  
22 Hospital and Affiliated Entities. These illegal kickbacks and bribes  
23 were provided to defendant under the guise of various arrangements,  
24 both written and oral, including a management agreement with PSPM; a  
25 medical directorship with Abrazos; payments from Pacific Hospital for  
26 UDT referrals obtained through PMR; and payments representing  
27 purported consulting fees, bonuses, and dividends.

28

1       For example, under the PSPM management agreement, starting in or  
 2 about 1998 and continuing until at least March 2013, PSPM facilitated  
 3 the payment of kickbacks to defendant by subsidizing medical practice  
 4 costs that would have otherwise been passed on to, and reduced the  
 5 profits of, defendant and Downey Ortho. More specifically, defendant  
 6 and other physicians at Downey Ortho entered into an agreement with  
 7 PSPM to provide management and administration of day-to-day business  
 8 operations, including equipment and furnishings, billing and  
 9 collection services, rent, administrative staff salaries, and other  
 10 miscellaneous expenses. In exchange for these management and  
 11 administrative services, PSPM was entitled to a percentage of Downey  
 12 Ortho's monthly collections from patient billings, and, in turn, an  
 13 allocated share of the monthly collections for defendant and other  
 14 co-conspirators practicing at Downey Ortho.

15       According to the terms of the management agreement between PSPM  
 16 and Downey Ortho, PSPM's management fee, which was calculated as a  
 17 specified percentage of Downey Ortho's monthly collections, was  
 18 purportedly: (1) "projected to be sufficient to enable PSPM to  
 19 recover all of the operating expenses of PSPM [and] generate a  
 20 reasonable return on investment[;]" and (2) calculated "without  
 21 taking into account . . . the volume or value of any referrals of  
 22 business from . . . [Downey Ortho] to PSPM (or its affiliates)[.]"  
 23 The PSPM management agreement further provided:

24           No amount paid hereunder is intended to be, nor shall it be  
 25 construed to be, an inducement or payment for referral of,  
 26 or recommending referral of, patients by [Downey Ortho] to  
 27 PSPM (or its affiliates)[.] In addition, the management  
 28 fee charged hereunder does not include any discount,

1 rebate, kickback, or other reduction in charge, and the  
2 management fee charged hereunder is not intended to be, nor  
3 shall it be construed to be, an inducement or payment for  
4 referral, or recommendation of referral, of patients by  
5 [Downey Ortho] [to] PSPM (or its affiliates) [.]

6 In reality, however, PSPM's management fee was "upside down,"  
7 such that the percentage of monthly collections Downey Ortho paid to  
8 PSPM would cover only a fraction of PSPM's expenses associated with  
9 the management of Downey Ortho. Defendant, other Downey Ortho-  
10 Affiliated Physicians, Drobot, UCC-A, and other co-conspirators  
11 understood that PSPM's percentage of the monthly collections would  
12 not be enough to pay the monthly operating expenses and other costs  
13 associated with managing Downey Ortho, and that the recurring PSPM  
14 deficit would allow defendant and other Downey Ortho physicians to  
15 retain a larger share of monthly Downey Ortho collections. Defendant  
16 and his co-conspirators understood that PSPM was willing to absorb  
17 these losses because defendant and other Kickback Induced Surgeons  
18 would refer Kickback Tainted Surgeries and Services to Pacific  
19 Hospital and Affiliated Entities. Further, starting in mid-2008,  
20 Drobot and other co-conspirators told defendant and Downey Ortho's  
21 other Kickback Induced Surgeons that they need to use I2 hardware in  
22 surgeries at Pacific Hospital. The profits from I2 financed the PSPM  
23 kickbacks and subsidized PSPM's losses.

24 The Kickback Induced Surgeries included surgeries reimbursed  
25 under various federal health programs. For example, on or about  
26 December 8, 2012, defendant performed surgery on patient G.G. As a  
27 result, on or about January 7, 2013, Pacific Hospital mailed a claim  
28 for the hospital-billing component of patient G.G.'s medical care to

1 DOL-OWCP, which administers a federal workers' compensation program  
2 (the "FECA program"). On or about February 7, 2013, DOL-OWCP caused  
3 a U.S. Treasury Check in the amount of \$147,263.46 to be mailed to  
4 Pacific Hospital for reimbursement of various claims, including  
5 \$57,445.81 related to the hospital-billing component of patient  
6 G.G.'s medical care reimbursed under the FECA program.

7 Defendant understood that: (1) PSPM existed for Pacific  
8 Hospital's benefit; (2) Pacific Hospital was closely affiliated with  
9 PSPM; and (3) based on the value of Kickback Tainted Surgeries and  
10 Services that defendant and other Downey Ortho physicians referred to  
11 Pacific Hospital and Affiliated Entities, Pacific Hospital and  
12 Affiliated Entities would subsidize the losses associated with PSPM's  
13 management of Downey Ortho. Had defendant and his fellow Kickback  
14 Induced Surgeons stopped referring and performing surgeries at  
15 Pacific Hospital, defendant knew that the arrangement with PSPM would  
16 be terminated.

17 Hunt was an orthopedic surgeon specializing in shoulder and knee  
18 arthroscopy, who, starting in approximately June 2008, owned and  
19 operated Allied Medical Group ("Allied Medical"), a medical practice  
20 with clinics in Lawndale and Long Beach, California. As Hunt  
21 historically referred spinal surgery candidates to defendant,  
22 defendant, along with Drobot, UCC-A, and others, arranged for Drobot  
23 to pay kickbacks and bribes to Hunt in exchange for Hunt referring  
24 spinal surgeries to defendant that defendant would perform at Pacific  
25 Hospital. More specifically, UCC-A and Drobot entered into various  
26 contractual relationships with Hunt, including a loan, a  
27 substantially below-market sublease, an option agreement, and  
28 pharmacy dispensing contracts, to disguise remuneration paid to Hunt

1 to induce additional spinal surgery referrals to defendant. In  
2 connection with Hunt's option agreement, for example, in  
3 approximately January 2009, UCC-A, Hunt, and defendant met in UCC-A's  
4 office to discuss the monthly volume of spinal surgery referrals from  
5 Hunt to Capen. UCC-A and Hunt ultimately agreed that Hunt would be  
6 paid approximately \$30,000 per month under a sham option contract to  
7 induce and reward Hunt to refer a target of approximately three  
8 spinal surgeries per month to defendant, who would perform such  
9 surgeries at Pacific Hospital.

10 Defendant and his co-conspirators knew that the payment of  
11 bribes and kickbacks for the referral of patients for medical  
12 services was illegal. Defendant also understood the above-described  
13 kickback and bribe payments were conditioned on his continued volume  
14 of referrals to Pacific Hospital and Affiliated Entities. Moreover,  
15 the payment of kickbacks for the referral of Kickback Tainted  
16 Surgeries and Services performed at Pacific Hospital was to material  
17 to health care benefit programs and patients. The use of interstate  
18 wires and mailings to execute essential parts of the scheme was  
19 foreseeable to defendant. Moreover, interstate wires and mailings  
20 were used to execute essential parts of the scheme.

21 Between 1998 and April 2013, defendant referred or performed  
22 Kickback Tainted Surgeries and Services comprising approximately \$142  
23 million of the total amount Pacific Hospital billed to health care  
24 benefit programs, and for which Pacific Hospital was paid  
25 approximately \$56 million. The parties stipulate and agree that the  
26 value of the benefit conferred to Pacific Hospital from the  
27 arrangements with defendant, which were designed to steer Kickback  
28

1 Tainted Surgeries and Services to the hospital and affiliated  
2 entities, was between \$9.5 million and \$25 million.  
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